

RA9

**AMENDMENT NO. 1 TO AMENDED AND  
RESTATED MEMORANDUM OF UNDERSTANDING**

**(Apton Plaza)**

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING is entered into by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (hereinafter "Agency") and Apton Properties, L.L.C., a California limited liability company (hereinafter "Participant") (collectively the "Parties").

**RECITALS**

WHEREAS, Participant is the property owner of that real property located at 230 North Main Street, Milpitas, more particularly described in the legal description attached hereto as Exhibit A attached herein and incorporated herein by this reference ("the Property").

WHEREAS, Participant initially intended to develop a rental apartment project on the Property that consisted of approximately 96 residential units ("the Initial Project"), and the Parties entered into that certain Memorandum of Understanding (Apton Plaza), dated September 24, 2004 ("the Prior MOU"), which set forth sets forth the Parties' agreement with respect to Participant's affordable housing obligations with respect to the Initial Project and further set forth additional conditions for the development of a housing project on the property and the rights and duties of the Parties respectively.

WHEREAS, Participant subsequently indicated a desire to the Agency to instead construct a 96-unit condominium project ("the Revised Project"), and the parties entered into the Amended and Restated Memorandum of Understanding, dated December 21, 2005 ("the MOU"), to reflect the Revised Project.

WHEREAS, Participant has indicated a desire to the Agency to revise the Project once again to reduce the number of units in the project from a total of 96 units to 93 units, and the parties now desire to amend the MOU to reflect additional revisions to the Revised Project.

**AMENDMENT**

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein and other good and valuable consideration the Parties understand and agree as follows:

Section 1. The third recital on page 1 of the MOU is amended to read as follows: "WHEREAS, Participant subsequently indicated a desire to the Agency to instead construct a 93-unit condominium project ("the Revised Project"), and the Agency is agreeable to such a change in the project provided that the Memorandum of Understanding and other associated agreements are revised to reflect the Revised Project."

Section 2. The seventh recital on page 1 of the MOU is amended to read as follows:  
"WHEREAS, this MOU will result in the construction of 19 affordable housing units, of which 9 are very low-income units and 10 are moderate-income units."

**IN WITNESS WHEREOF**, Agency has by order of the Agency Board of the Directors caused this Amendment No. 1 to the Amended and Restated Memorandum of Understanding to be subscribed by the Executive Director of the Agency by Resolution No. \_\_\_\_\_ and attested by the City Clerk thereof, and Apton Properties, LLC has executed the same this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

"AGENCY"

Redevelopment Agency of the  
City of Milpitas

\_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
City Clerk

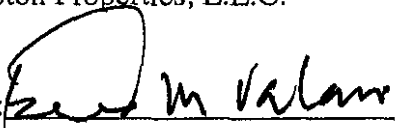
Approved as to Form:

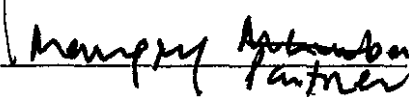
\_\_\_\_\_  
Agency Counsel

Apton Properties, L.L.C.

By:

Its:



  
Partner

**EXHIBIT A**  
**LEGAL DESCRIPTION**

## EXHIBIT "A"

### LEGAL DESCRIPTION

All that certain real property situate in the City of Milpitas, County of Santa Clara, State of California, described as follows:

#### Parcel One:

Beginning at the point of intersection of the Westerly right of way line of the Southern Pacific Railroad Company, with the Easterly line of San Jose-Oakland Road (State Highway), said point of beginning also being the Northernmost corner of that certain Tract of Land described in the Deed from Standard Oil Company of California, a Delaware Corporation, Erwin A. Luttermoser, dated July 28, 1954, recorded September 7, 1954 in Book 2953, of Official Records, Page 161, Santa Clara County Records; thence from said point of beginning along the Easterly line of said San Jose-Oakland Road for the following courses and distances; Southwesterly along an arc of a curve to the right, with a radius of 668.25 feet, through a central angle of 7 deg. 45' 29", for an arc distance of 90.48 feet; thence South 40 deg. 12' West 27.52 feet and thence Southwesterly along an arc of a curve to the left, with a radius of 477.104 feet, through a central angle of 2 deg. 24' 47"; for an arc distance of 20.09 feet and the true point of beginning of the tract of land to be described, said true point of beginning of the tract of land to be described, said true point of beginning also being the Westernmost corner of said land so described in the Deed to said Luttermoser above referred to; thence from said true point of beginning South 12 deg. 00' East along a Southwesterly line of land so described in the Deed to said Luttermoser for a distance of 275.72 feet to an angle corner therein in the Northerly line of the Old Oakland Road, as said line was established by Deed from Marion E. Weller, to County of Santa Clara, dated August 31, 1915, recorded November 12, 1915 in Book 434 of Deeds, Page 595; thence South 74 deg. 15' West along the said Northerly line of the Old Oakland Road for a distance of 163.05 feet, more or less to the point of intersection thereof with the said Easterly line of San Jose-Oakland Road, along an arc of a curve to the right, with a radius of 477.104 feet, through a central angle of 40 deg. 23' 13" for an arc distance of 336.24 feet, more or less, to the true point of beginning.

Excepting therefrom, as to Parcel I above, the following described parcel of land as conveyed to the City of Milpitas, a Municipal Corporation, by instrument recorded May 10, 1972 in Book 9826, Page 263, of Official Records.

Beginning at the point of intersection of the Northerly line of a 40 foot County Road (Weller Lane) and the Easterly line of the State Highway between San Jose and Oakland, (North Main Street) as described in the Deed from Marion E. Weller to Standard Oil Company, a California Corporation, recorded December 23, 1919 in Book 502 of Deeds, Page 297, Santa Clara County Records; thence along said Northerly line of Weller Lane North 74 deg. 15' East, 25.93 feet; thence leaving said Northerly line of along a tangent curve to the right whose tangent bears South 74 deg. 15' West having a radius of 20.00 feet, a central angle of 106 deg. 19' 56", an arc length of 37.12 feet to a point on the Easterly line of North Main Street; thence along said Easterly line of North Main Street, along a curve to the left whose

tangent bears South 0 deg. 34' 56" West having a radius of 477.10 feet, a central angle of 3 deg. 10' 56", an arc length of 26.50 feet to the point of beginning.

Excepting from Parcel One above: All oil, gas and other hydrocarbons, geothermal resources as defined in Section 6903 of the California Public Resource Code and all other minerals, whether similar to those specified or not, within or that may be produced from said real property, provided however, that all rights and interest in the surface of said real property are hereby conveyed to Grantee, no right or interest of any kind to use the surface, expressed or implied, being excepted or reserved to Grantor; and provided further that grantor shall not, in exercising such rights, do anything which will damage the surface of said real property or any structure thereon, and shall not conduct and drilling or other operations of any kind in the first five hundred (500) feet below the surface of said real property.

And further excepting and reserving as to Parcel I above, to grantor, its successors and/or assigns, the sole and exclusive right from time to time to drill and maintain wells or other works into or through said real property and the adjoining streets, roads and highways below a depth of five hundred (500) feet to produce, or inject, store and remove from and through such wells or works, oil, gas, water and other substances of whatever nature including the right to perform below said depth, any and all operations deemed by Grantor necessary or convenient for all exercise of such rights.

Parcel Two:

All that certain parcel of land in the County of Santa Clara, State of California lying within the following described parcel of land and lying Easterly of a line which lies Westerly of parallel with and 105 feet measured at right angles from the Easterly boundary line of the following described parcel of land.

Beginning at the intersection of the Westerly right of way line of the Southern Pacific Railroad between San Jose and Oakland with the Easterly right of way line of the State Highway between San Jose and Oakland, about 1/2 mile North of Milpitas Railroad Depot; thence along the Easterly right of way line of the Highway, on curve to the right, having a radius of 66825 feet, with a chord of 90.125 feet along bearing South 36 deg. 20" West; thence along Easterly right of way line of Highway on a curve to the left, having a radius at 477.104 feet with a chord 348.177 feet long bearing South 18 deg. 48' West to the intersection of Easterly line of Highway right of way with Northerly line of 40 foot County Road; thence North 74 deg. 15' East 213.95 feet along the Northerly line of said County Road; thence South 12 deg. 10' East 146.385 feet; thence North 74 deg. 15' East 54 feet to the Westerly right of way line of the Southern Pacific Railroad; thence North 12 deg. 00' West 504.74 feet along the Westerly right of way Southern Pacific Railroad to the point of beginning.

Excepting therefrom: Any portion lying within the bounds of Parcel One described hereinabove.

ARB No: 027-03-026, 027-03-028

APN No: 028-24-017, 028-24-018

Recording requested by:  
City of Milpitas

When recorded mail to:  
City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035  
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§ 6103, 27383

(Space Above This Line Reserved For Recorder's Use)

**AMENDMENT NUMBER TWO TO OWNER PARTICIPATION AGREEMENT  
BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF  
MILPITAS AND APTON PROPERTIES, LLC**

THIS AMENDMENT is entered into as of the 2nd day of August, 2005, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (the "Agency") and APTON PROPERTIES, LLC a California limited liability company (the "Participant") (collectively Agency and Participant are referred to as "Parties").

**RECITALS**

A. The Parties are parties to that certain Owner Participation Agreement by and between Redevelopment Agency of the City of Milpitas and Apton Properties, LLC, dated September 7, 2004 ("the Agreement"), and that certain Amendment Number One to the Agreement, dated December 21, 2004.

B. Participant owns that certain real property located at 230 North Main Street, Milpitas ("Site") more particularly described in the legal description in Exhibit A attached hereto and incorporated herein by this reference. Participant initially proposed on the Site and received approvals from the City for a mixed-use project that includes approximately 96-unit, multi-family condominium project of which 19 units shall be affordable for very low to moderate-income persons and households (hereinafter the "Project").

C. Participant now desires to develop a 93-unit, multi-family condominium project and has applied to the City for the appropriate amendments to the Project approvals, although the Project would still include 19 units that are affordable for very low to moderate-income persons.

D. The Parties therefore desire to amend the Agreement to reflect the Participant's revisions to the Project.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and the covenants and promises hereinafter contained, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Agency and Participant hereby agree as follows:

## AMENDMENT

Section 1. The last sentence of Recital B of the Agreement is amended to read as follows: "Participant has proposed on the Site a mixed-use project that includes approximately 93 multi-family units, of which 19 units shall be affordable to for very low to moderate-income persons and households (hereinafter the "Project")."

Section 2. Attachment No. 3 to the Agreement is replaced with Exhibit B attached hereto and labeled "Attachment No. 3, SCOPE OF DEVELOPMENT (PROJECT DESCRIPTION, CONCEPTUAL SITE PLAN & ELEVATIONS)."

Section 3. All other provisions of the Agreement shall remain in effect.

### AGENCY:

Milpitas Redevelopment Agency

By: \_\_\_\_\_

Charles Lawson

Its: Executive Director

Attest:

\_\_\_\_\_  
Mary Lavalle, Agency Secretary

Approved as to form:

\_\_\_\_\_  
Steven T. Mattas, Agency Counsel

### PARTICIPANT:

APTON PROPERTIES, a California limited liability company

\_\_\_\_\_  
By: *Baden V. Scott*

Its: *Margaret Barker*

**Exhibit A**

**LEGAL DESCRIPTION**



EXHIBIT "A"

LEGAL DESCRIPTION

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Parcel One:

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tangent bears South 0 deg. 34' 56" West having a radius of 477.10 feet, a central angle of 3 deg. 10'56", an arc length of 26.50 feet to the point of beginning.

Excepting from Parcel One above: All oil, gas and other hydrocarbons, geothermal resources as defined in Section 6903 of the California Public Resource Code and all other minerals, whether similar to those specified or not, within or that may be produced from said real property, provided however, that all rights and interest in the surface of said real property are hereby conveyed to Grantee, no right or interest of any kind to use the surface, expressed or implied, being excepted or reserved to Grantor; and provided further that grantor shall not, in exercising such rights, do anything which will damage the surface of said real property or any structure thereon, and shall not conduct and drilling or other operations of any kind in the first five hundred (500) feet below the surface of said real property.

And further excepting and reserving as to Parcel I above, to grantor, its successors and/or assigns, the sole and exclusive right from time to time to drill and maintain wells or other works into or through said real property and the adjoining streets, roads and highways below a depth of five hundred (500) feet to produce, or inject, store and remove from and through such wells or works, oil, gas, water and other substances of whatever nature including the right to perform below said depth, any and all operations deemed by Grantor necessary or convenient for all exercise of such rights.

Parcel Two:

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Excepting therefrom: Any portion lying within the bounds of Parcel One described hereinabove.

ARB No: 027-03-026, 027-03-028

APN No: 028-24-017, 028-24-018

**Exhibit B**

REVISED ATTACHMENT 3 TO THE AGREEMENT, SCOPE OF DEVELOPMENT

## **PROJECT DESCRIPTION**

### **Exhibit B**

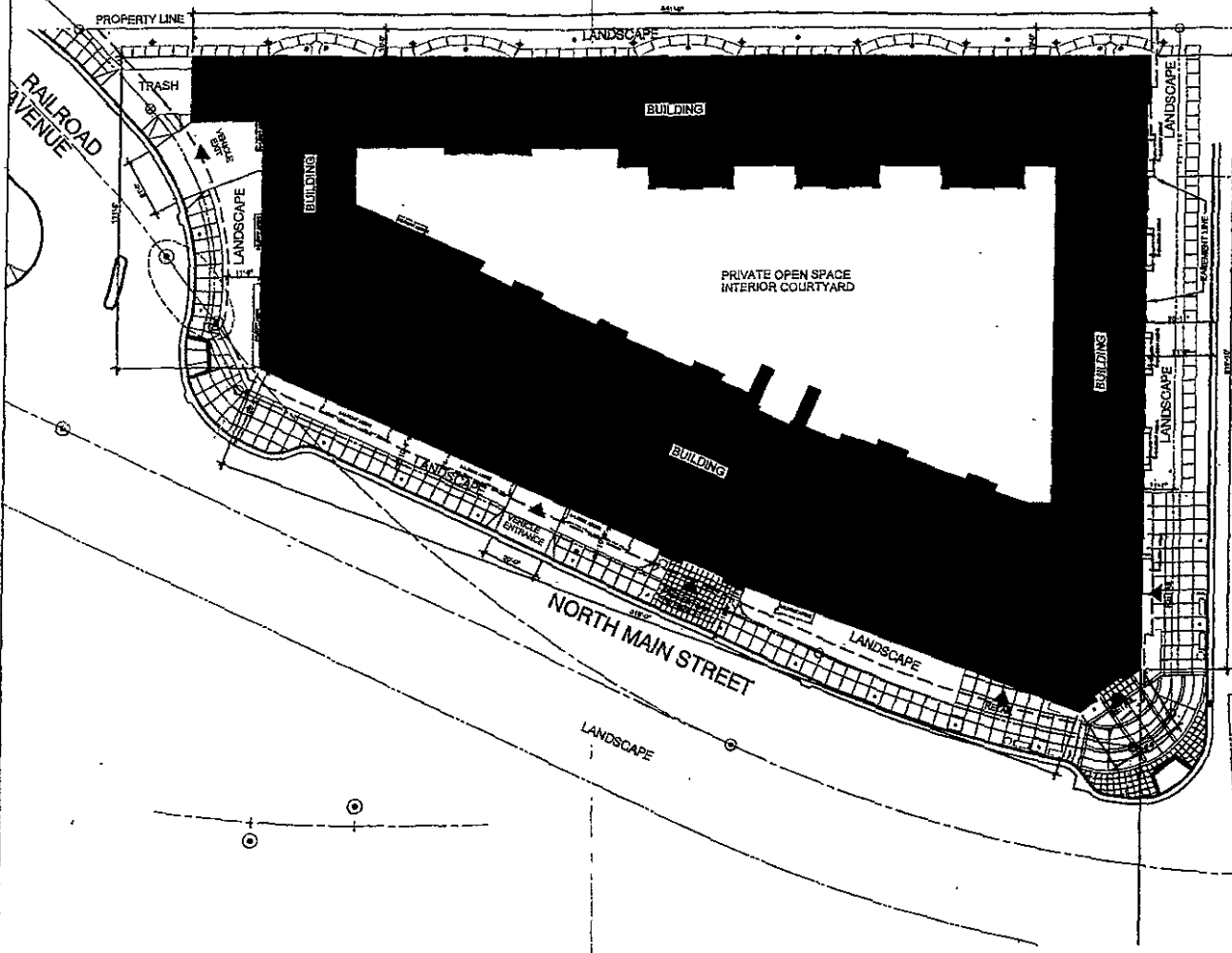
A mixed use residential and retail development consisting of 93 residential units and 3,000 sq. ft. of retail floor area within a 4-story building approximately 60 feet tall. The 3 stories of residential units would sit atop a 1-story, at-grade podium garage with a 3,000 sq. ft. retail space in the southwest corner. Other site improvements include landscaping, trash enclosure, streetscape upgrades including street trees, lighting and other amenities. Vehicular access to the parking garage is to just north of the residential lobby on N. Main Street with the garage exit at the northern end of the project off of Railroad Court. The ingress and egress of the garage would be by way of one-inbound and one outbound lane, each proposed at 15 feet in width. Security gates with a card reader would be located within the garage for both driveways to provide 173 secure parking spaces for the residents only. Ten (10) parking spaces for retail patrons would be provided along property's N. Main Street frontage. Other site features include a 19,274 sq. ft. interior open-air courtyard atop the podium garage with raised planters and lawn area. Landscaping consists of in-ground planters along the buildings frontages as well as the 10-foot wide rear setback, all planted with Ornamental Pear trees and a mixture of shrubs and groundcover. In addition to the internal open-air courtyard, other site amenities include a fitness, community, and meeting room.

The project is designed under the assumption that a land swap between the property owner and the City will occur. The land swap involves the abandonment of portions of Weller Lane, North Main Street and Railroad Court (totaling 8,940 sq. ft.) in exchange for City acquisition of the southeast corner of the existing parcel (6,165 sq. ft.) and portions of N. Main Street (1,857 sq. ft.). This property exchange would require the realignment of the streets and the associated utilities and street improvements. After the exchange the project site would be approximately 1.83 net acres (2.23 gross acres which includes area of adjacent streets to centerline as per General Plan definition of gross acres and density).

Project includes a Use Permit to not provide 28 parking spaces required by the zoning ordinance for guest and retail parking, to exceed the minimum and maximum building setback along the north property line due to the realignment of Railroad Court and reduction in drive aisle width.

Project also includes a density bonus to exceed the maximum density (40 units per acre) allowed under the multifamily very high-density land use designation by 4 units. The amendment would result in a density of 42 units per acre whereas the original approval would have resulted in a density of 46 units per acre. The applicant intends to meet the State and City Density Bonus regulations by making 20% of the units affordable to lower income households.

UNION PACIFIC RAILROAD  
(FORMERLY SOUTHERN PACIFIC TRANSPORTATION COMPANY)



CITY OF MILPITAS  
(DOC. 18169939)

CITY OF MILPITAS  
(773 M 1-3)

PARKING CALCULATION			
63 TOTAL UNITS			
Total Building Sq. Ft. - 50,213 s.f.			
Total Courtyard Sq. Ft. - 17,563 s.f.			
Unit mix:			
1 Br. Flat	25	11.5	= 287.5
2 Br. Flat	22	21.8	= 479.6
3 Br. Flat	16	32.0	= 512.0
			= 1,279.1
1 COMMERCIAL SPACE			= 0
Parking Req'd:	165 Spaces		
Parking Provided:	165 Spaces		
Garage	165 Spaces		
Off Site Parking	10 Spaces		

NOTE  
1. SEE LANDSCAPE DRAWINGS FOR LANDSCAPING.

SITE PLAN  
1/16" = 1'-0"



**APPROVED**

Architect/Engineer: **CA 0151212** ☒ Seal: **John A. Johnson, AIA**  
**APPROVED** ☒ Seal: **John A. Johnson, AIA**  
 20000 Milpitas Avenue, Suite 100  
 Milpitas, CA 95035

Client:  
**APRON PROPERTIES, LLC**  
 4000 ALAMOSA BOULEVARD  
 MILPITAS, CA 95035

Project:  
**773 M 1-3**  
 773 M 1-3  
 MILPITAS, CA

City Revisions

No.	Description	Date
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

City Revisions

No.	Description	Date
1	Planning Approved	10/20/2010
2	Planning Permit Issued	10/20/2010
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

Scale: 1/16" = 1'-0"

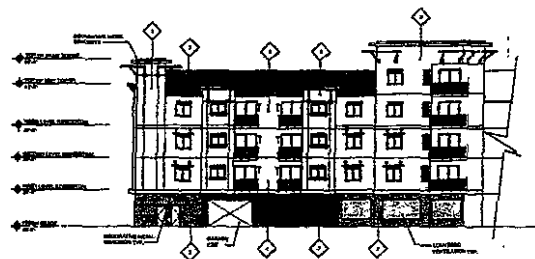
Drawn By: **JB**  
 Checked By: **JB**  
 Date: 10/20/2010

Site Plan

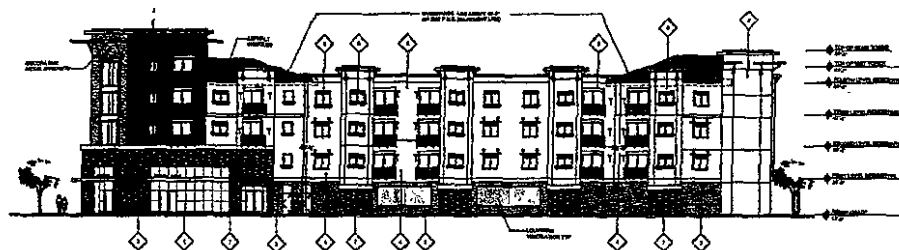
A-1



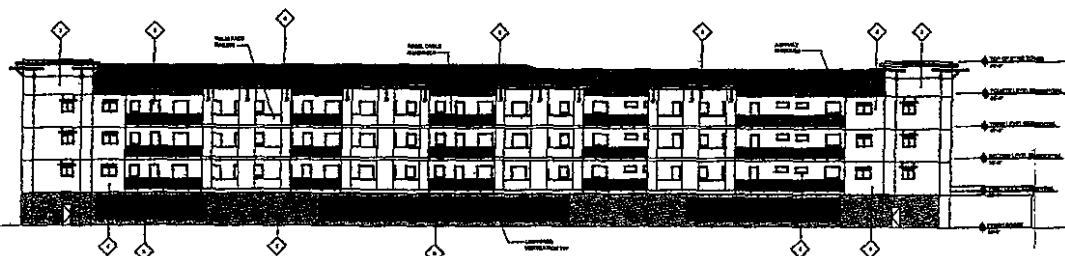
RETAIL ELEVATION (CORNER)



NORTH ELEVATION



**SOUTH ELEVATION - ALONG WELLER LANE**



EAST ELEVATION - ALONG PACIFIC RAILROAD

**COLOR / MATERIAL LEGEND**

WOOD: HARD WOOD	GLASS: CLEAR
WOOD: WHITE	GLASS: TINTED
ARTIFICIAL WOOD: BARKLESS	
ARTIFICIAL WOOD: BARKED (CHARMING)	
BRICK: BROWN	
WOOD: BROWN	
CONCRETE	
ARTIFICIAL WOOD	
CONCRETE	

Client: Roylance		
No.	Description	Dr.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

City Revisions		
No.	Description	Date
1	Plumbing Remodeling	02/24/00
2	Plumbing Remodeling	04/01/00
3		
4		
5		
6		
7		
8		
9		
10		

Date: 07/20/00

By: UNP-CF

Drawn By: M

Checked By:

Next Title:

## Building Elevations

A-3.0